

THE HONORABLE JAMES L. ROBART

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

UNITED STATES OF AMERICA,)
) Case No. 2:12-cv-01282-JLR
Plaintiff,)
) **DECLARATION OF**
v.) **WALTER KATZ**
)
CITY OF SEATTLE,)
)
Defendant.)
_____)

I, WALTER KATZ, being familiar with the facts set forth herein based on my personal knowledge, and being competent to testify, hereby declare under penalty of perjury that the following is true and correct:

1. I am the Director of Professional Services of Benchmark Analytics, a firm founded to provide advanced, evidence-based solutions for police force management. Benchmark is a subcontractor to 21st Century Policing, LLC for this project.
2. My past work experiences include serving as Deputy Chief of Staff for Public Safety in the Chicago Mayor's Office from 2017 to 2019. I was a co-negotiator of the recently enacted consent decree and oversaw one of the most complex and multi-layered oversight structures in the United States, which includes a civilian investigation office, a police board, a public safety inspector general, and a Federal court-appointed monitor.
3. From 2016 to 2017, I served as the Independent Police Auditor for the City of San José, managing the independent oversight of San José Police Department (SJPD)

- misconduct complaint investigations, community outreach, and policy recommendations, including the quality of use of force investigations. In doing so, I frequently looked to policies and practices of other departments to set a baseline for SJPd's performance on critical issues that had a direct impact on the San José community's wellbeing.
4. From 2016 to 2017 I served on the Board of the National Association for Civilian Oversight of Law Enforcement and chaired the Training and Education Committee.
 5. From 2010 through 2015, I served on the staffs of offices that had oversight over the Los Angeles County Sheriff's Department. First, I was a staff attorney with the Office of Independent (OIR) and then Deputy Inspector General for the Office of Inspector General, OIR's successor agency. In the latter position, I developed a framework to increase transparency of civilian complaint data and evaluated the results of disciplinary investigations.
 6. Previously, I spent seventeen years as a deputy public defender in Southern California, representing indigent defendants in a range of criminal cases.
 7. Along with other subject matter experts from 21 Century Policing Solutions, LLC, I was engaged by the City of Seattle to develop a methodology to assess the City's current accountability system. The City requested that we draft a methodology that would be responsive to the Court's May 15th ruling and May 21st order, primarily, and which would also incorporate the priorities and perspectives of the parties, the Monitor, the Community Police Commission (CPC), and the City's other accountability partners, the Office of Inspector General for Public Safety (OIG) and Office of Police Accountability (OPA). Attached as **Exhibit A** to this Declaration is a true and accurate copy of the final, proposed methodology.
 8. My colleague, Ron Davis, and I were invited to speak to the Commissioners of the CPC at a public meeting on July 17, 2019. We described our role and goals in developing a methodology, asked for input, and answered questions. At that meeting, many of the commissioners expressed frustration that the City had made the decision to hire outside experts without first consulting CPC. Commissioners also expressed confusion and frustration about why an assessment was being conducted in the first place.
 9. On July 18, 2019, Ron Davis, Sean Smoot, and I led a half-day work session. Its purpose was to discuss and shape the objectives and scope of the methodology. In attendance (some by phone) were:
 - A. Legal Counsel to the Office of the Mayor, Michelle Chen;
 - B. City Attorney Peter Holmes, and Assistant City Attorneys Kerala Cowart and Paul Olsen;

1 C. Seattle Police Chief Carmen Best, Deputy Chief Marc Garth Green, Chief
2 Strategy Officer Christopher Fisher, and Policy Advisor Beth Gappert;

3 D. Merrick Bobb, Consent Decree Monitor, and Joseph Goldhammer, legal
4 advisor to Monitor on labor law matters;

5 E. CPC Co-chairs Reverend Harriet Walden, Emma Catague, Isaac Ruiz, CPC
6 Interim Executive Director Bessie Scott, CPC Communication Advisor Jesse
7 Franz, CPC Legal Advisor ret. Judge Anne Levinson, and CPC Litigation
8 Counsel David Perez;

9 F. Director Andrew Myerberg, OPA;

10 G. Inspector General Lisa Judge, OIG; and

11 H. Timothy Mygatt, Kerry Keefe, Matt Waldrop, and Jeff Murray, attorneys of the
12 U.S. Department of Justice.

13 The stakeholders who were present provided thoughtful and substantive insight in a
14 discussion about their goals related to the Court's May 21st Order and their vision for
15 the City's police accountability system.

16 10. The discussion revealed disagreement over how the work session participants
17 interpreted the Court's order.

18 11. CPC representatives, including co-chair Isaac Ruiz and Judge Levinson, and OPA
19 Director Myerberg described how they had been closely involved in drafting the
20 Accountability Ordinance and building community support for it. They explained that
21 their work and the work of the community included an extensive nation-wide research
22 effort to determine best practices and their belief that the Ordinance reflected
23 community consensus on the ideal accountability system. There was significant
frustration and concern that the proposed assessment would ignore that body of work.

12. Some attendees expressed that it would be redundant to conduct an assessment of the
accountability system. These participants believed, rather, that the Court's order
asked for a methodology for how to address the deficiencies that have already been
identified in CPC's submissions to the Court.

13. Other attendees expressed the view that the Court's order asked for an assessment in
order to gather additional information and build a fuller, more robust evidentiary
record regarding any potential deficiencies from the perspective of the Consent
Decree.

14. There was also disagreement over the methods the assessors should employ in the
methodology. Notably, one participant objected to the suggestion of my colleagues
and me that the methodology would involve benchmarking and comparisons against
other cities. The participant expressed that the goal should not be to compare Seattle

1 to other cities; rather, the goal should be for Seattle to have the best, or one of the
2 best, accountability systems and the best police force.

3 15. After exploring areas of disagreement, a detailed discussion regarding what subjects
4 should be covered in the methodology took place.

5 16. The Monitor expressed the goal of a disciplinary system that produces fair results and
6 allows for the police chief's determinations to be upheld to the greatest degree
7 possible. The Monitor also stated that important topics for analysis include
8 qualifications for arbitrators, the burden of proof, the openness of arbitration hearings,
9 and constraints on OPA (e.g., how officers are questioned, civilianization of
10 investigators, whether non-sworn investigators are able to investigate sworn staff).

11 17. CPC representatives put forth the following suggestions, among others, for topics to
12 be included in the methodology:

13 A. Elements for a fair and just system;

14 B. Examination of not only outcomes of disciplinary cases, but also the reasons
15 why arbitrators and adjudicators overturn chiefs' decisions;

16 C. Focus on discipline cases addressing misconduct involving social justice, race,
17 and force issues;

18 D. Transparency and openness of arbitration hearings;

19 E. Subject matter expertise of arbitrator or adjudicator;

20 F. Removal of requirement in the collective bargaining agreement (CBA) that
21 dishonesty be intentional;

22 G. Limitation of length of time for disciplinary appeals;

23 H. That OIG and OPA should have subpoena power over officers' families and
records of officers held by third parties;

I. Examination of whether police chiefs give more lenient discipline because
they are afraid of being reversed in a disciplinary appeal;

18. Another participant expressed that subpoena power for OIG and OPA should be
explored.

19. A follow-up telephone conference was held on July 23 with the work-session
participants. The purpose was to review the previous work session, identify issues
that were flagged as being important, and to determine whether concurrence could be
reached on the framing of the Order. On the call, participants raised points of
clarification and emphasis, including:

- A. The role of civilian investigators in investigating allegations of criminal misconduct;
- B. Statute of limitations to investigate misconduct allegations;
- C. OPA and OIG subpoena power of third party records and relatives of officers;
- D. Timelines for investigations and appeals;
- E. Requirements that subject officers must disclose evidence and defenses during the pendency of the investigations rather than waiting until the appeals process;
- F. The police chief's authority to place officers on leave during the pendency of an investigation;
- G. File retention of unsustained misconduct allegations during the entirety of an officer's employment beyond the current three year limitation;
- H. The importance that all ranks of sworn staff are treated in an equivalent manner;
- I. Assuring that the role of supervisors is investigated as well as immediate subject officers;
- J. The use of national arbitration rules (specifically, the applicability of quantum of proof increasing as the seriousness of potential discipline increases);

We, representatives from 21CP and Benchmark, emphasized that we would take all feedback into consideration and pay particular focus on those aspects that relate to the discipline appeals process and other accountability issues raised by the Court.

20. I have highlighted herein only some of the participants' many valuable and important contributions. I have not attempted to exhaustively describe the statements or viewpoints of all the participants at the work session and on the phone call.
21. After the July 18 work session and July 23 phone call, 21CP drafted a methodology that proposed analysis of many, although not all, of the specific features of the disciplinary and accountability systems that had been raised, especially those related to discipline appeals procedures.
22. 21CP and Benchmark received written and oral input after the City shared a July 29th draft of the methodology with stakeholders. My colleagues and I made substantial revisions to the methodology based on this input, including: eliminating the examination of the roles and responsibilities of OPA, OIG, and CPC; reframing the way in which the findings would be couched so that the final report will not contain proscriptive recommendations but will rather present objective, evidence-based observations to the

1 inform the decisions of the City's elected leaders, appointees and community; adding an
2 analysis of the features of the disciplinary appeals system that led to the result in the
3 Adley Shepherd arbitration; and including a more focused, extended analysis of these
4 four features of City's accountability system: (1) 180-day timeline for disciplinary
investigations; (2) burden of proof and standard of review in disciplinary appeals; (3)
subpoena authority of OPA and OIG; and (4) features of arbitration to promote public
confidence.

5
6 I declare under penalty of perjury that the foregoing is true and correct.

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8 DATED this 15th day of August, 2019 at Chicago, Cook County, Illinois.

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WALTER KATZ

CERTIFICATE OF SERVICE

I hereby certify that on August 15, 2018, I electronically filed the foregoing with the Clerk of the Court using the CM/ECF system, which will send notification of such filing to the following:

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DATED this 15th day of August, 2019, at Seattle, King County, Washington.

s/ Kerala T. Cowart
Kerala T. Cowart, WSBA #53649
Assistant City Attorney
E-mail: kerala.cowart@seattle.gov

EXHIBIT A TO KATZ DECLARATION

**Final, Proposed Methodology for
Accountability Assessment**

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Seattle, WA Police Dept. – *Proposed* - Methodology

August 15, 2019

Background

The Court's May 21, 2019 Order directs "the City and the United States, with the assistance of the Monitor and the CPC, to formulate a methodology (1) for assessing the present accountability regime, and (2) for how the City proposes to achieve compliance." The methodology is due to the Court by August 15, 2019.

As indicated in the City of Seattle's motion seeking an extension of time, the parties retained 21CP to help design a methodology and conduct the assessment. As ordered by the Court, this was done with the assistance and input of the CPC and the Monitor, as well as community, the OPA, OIG and other stakeholders. At the end of June, 21CP conducted an initial two-day site visit to Seattle and met with representatives of SPD, CPC, Monitor, OPA, OIG, and DOJ. Subsequently, in July, 21CP conducted a second two-day site visit and met with the full CPC commission, monitoring team, and other community organizations. A half-day work session with CPC Monitor, OPA, OIG, and DOJ also occurred during the second site visit. A third site visit was made by 21CP to conduct more community meetings and receive feedback on the draft proposed methodology. This proposed methodology is intended to capture the feedback from the engagement over the last two and half months with Seattle stakeholders.

21CP recognizes that community and a broad range of stakeholders have been and continue to be heavily invested in building a police accountability system that is effective, fair and transparent. This assessment is not an attempt to undo the hard work and countless hours that have been dedicated to this effort over many years. 21CP also recognizes that while this proposed methodology incorporates concerns and suggestions by the community and accountability entities, there remain areas of disagreement regarding the need, scope and purpose of the assessment. 21CP is committed to doing an assessment as finally approved by the Court.

Overview

21CP recommends that this assessment be conducted in two parts to assist the parties and the Court in evaluating the accountability regime.

First, is a focused evaluation of issues particularly noted by the Court. The scope of the evaluation is the attributes contributing to the outcome of the Adley Shepherd arbitration case, whether those attributes were altered by the recently enacted CBA, and whether those identified issues have or could potentially be addressed through changes in the disciplinary appeals process. In addition to these issues, this assessment will examine specific elements that, based on our early observations and stakeholder

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feedback, could implicate the effectiveness and legitimacy of the work of important elements of the accountability system.

Second, there will be an assessment of specific features of Seattle's accountability and disciplinary regime in comparison to practices and systems in other comparable jurisdictions. This review, described more fully below, includes many factors suggested through the engagement process, including the factors identified in part 1, above. This assessment will be conducted through a survey of comparably sized jurisdictions and site visits, where appropriate, review of relevant provisions in current state and local laws and collective bargaining agreements, and other relevant materials to provide objective, evidence-based observations.

Assessment Methodology

Part 1 – Assessment of the Accountability System, Including Factors Contributing to the Adley Shepherd Case Outcome and Particular elements of Accountability Ordinance not Implemented in the Current CBA

Purpose: Conduct an evaluation of the current accountability system, with a specific focus on attributes that contributed to the outcome in Officer Adley Shepherd's case, including: 1) whether those attributes implicate systemic issues and changes that should be made to the disciplinary appeals process; 2) whether subsequent revisions to the disciplinary appeals process, if any, have addressed the identified attributes; and 3) to the extent the attributes implicate systemic issues and have not been addressed, options for addressing them. In addition, the assessment will address specific areas where the current CBA deviates from the provisions of the accountability legislation in a manner which could have significant impact on the work of the OPA and OIG within the accountability system, namely: 1) the calculation of the 180-day timeline for disciplinary investigations; 2) the quantum of proof and standard of review in disciplinary appeals; and 3) the lack of subpoena authority of OPA and OIG.

Approach: The proposed focused analysis will include:

1. Effectiveness of Accountability Regime -- The analysis will focus on the following:
 - a. Using documents, such as SPD and independent oversight entities policies and the Inspector General's Discipline, Grievance, and Arbitration Process Map, as a starting point, map all elements of the discipline grievance and arbitration processes to applicable laws, rules, policies and collective bargaining agreements.
 - b. Whether the current disciplinary system results in levels of accountability that ensure fair and proportional discipline for force-related misconduct?

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- c. Does the system conflict with public and officer safety?
 - d. Does the system appear to achieve the legitimacy necessary to promote public confidence and achieve its goals (in terms of objectivity, certainty, perceived fairness, and transparency) as opposed to viable, alternative solutions?
 - e. Do the oversight entities of the accountability system effectively work together, so that each component of the system can adequately fulfill their respective missions?
- 2. Shepherd case review – 21CP will first assess the systemic attributes of the discipline appeals process that contributed to the outcome of the case -- such as the admission of testimony during the arbitration hearing regarding training; 21CP will assess the impact of these attributes on accountability and whether the City has subsequently addressed the identified issues. To the extent the systemic attributes have not been addressed, the assessment will identify options for addressing them.
 - 3. Disciplinary Appeals Process – 21CP will conduct a comparative analysis between the former (existing at time of Shepherd) and the current discipline, grievance and arbitration structures, procedures. This analysis will include City of Seattle data, document reviews, stakeholder interviews, and best practices from other jurisdictions.
 - 4. Specific Accountability Regime Elements – 21CP will assess specific elements that, based on our early observations and stakeholder feedback, items could implicate the effectiveness and legitimacy of the work of important elements of the accountability system, namely OPA and OIG and whichever body hears disciplinary appeals: 1) the calculation of the 180-day timeline for disciplinary investigations; 2) the quantum of proof and standard of review in disciplinary appeals; and 3) the lack of subpoena authority of OPA and OIG. This assessment will be based on review of City policies and procedures, records and data of completed investigations and interviews of stakeholders.

Part II: Accountability & Disciplinary Appeal Assessment Survey

The purpose of this project part is to conduct research on best practices, and evaluate the City of Seattle's accountability system, related to discipline appeals, and arbitration. This part will include identifying comparable jurisdictions, developing a survey instrument, administering the survey to comparable agencies, reviewing developing trends, analyzing best practices around arbitrator vetting/credentialing, and other efforts required for a comprehensive review of the topic.

Based on the Court's rulings as well as feedback from accountability partners, this part will focus on data gathering and analysis to objectively benchmark features of accountability related to officer discipline and appeals process.

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1. 21CP will develop a survey instrument designed to capture information about comparable agency disciplinary appeal processes. The primary focus of the survey will be on the elements and processes of discipline appeal systems in comparably sized jurisdictions in the United States. 21CP is developing survey questions based on input from CPC, Monitor and other Seattle stakeholders in meetings and work session. The survey questions also represent topics based on a thorough review of documents, including the Court's May 15 and May 21, 2019 rulings, the Accountability Ordinance, relevant collective bargaining agreements, and the November 13, 2018 City Council resolution. At the outset, 21CP projects that the discipline appeals process survey will be seeking a range of information from respondents. The anticipated questions are designed to elicit insight into the elements of systems that are a reflection of state and local laws of surveyed cities including:
 - a. Whether jurisdiction of agency allows for peace officer collective bargaining.
 - b. Type of process (e.g. arbitration, civil service board, circuit or similar court review) – including any limitations on reviewable classes of discipline (suspension, demotion, termination).
 - c. Adjudicator selection process.
 - d. Term limits, if any, of adjudicator.
 - e. Qualifications/requirements of adjudicator(s).
 - f. Selection process of any hearing officers (who, in turn, submit factual findings or recommendations to final adjudicators).
 - g. Quantum of proof necessary for initial disciplinary decision and whether it elevates with the seriousness of the allegation or discipline.
 - h. Standard of appellate review.
 - i. Quantum of proof necessary to uphold Chief's decision and the applicability of national arbitration rules for jurisdictions that rely on arbitration (specifically insofar as the standard elevates with the seriousness of allegation or potential discipline).
 - j. If arbitration is used as appeals process, whether American Arbitration Association rules are used.
 - k. Whether appellant is prohibited from presenting new evidence during appeals process (in other words, is the subject of investigation required to disclose defenses to the charge during the pendency of the investigation rather than raising it during the appeal?)
 - l. Transparency of appeals process
 - i. Are hearings open to the public?
 - ii. Are transcripts or recordings of hearings made available to the public?
 - iii. Length of time record of appeals are retained
 - m. Data of three years of discipline appeal results
 2. An additional portion of the survey will ask questions that are not directly related to the appeals process but are focused on other areas of respective accountability systems:

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- a. Retention time of disciplinary files
 - b. Calculation, extension and/or recalculation of investigatory timelines based on circumstances of notice and other factors (including operational tolling of administrative investigation time during a pending criminal investigation).
 - c. Subpoena power of external accountability agencies or internal affairs / disciplinary investigators
 - d. The extent of the use of civilian investigators of alleged officer misconduct
 - e. Whether accountability system rules are applied consistently to all ranks.
 - f. Transparency of the overall disciplinary process, including whether disciplinary outcomes are tracked and made publicly available (for example, the availability of data on the nature of the misconduct, the discipline imposed, and the outcome of any disciplinary appeal).
 - g. Data for three years of initiated complaints and outcomes of such investigations

21CP anticipates distributing the survey to the jurisdictions that rank in population ten above and ten below Seattle. Choosing comparably-sized cities for administration of surveys of other jurisdictions is an objective selection method and industry practice. Those cities are:

San Diego	San Francisco	Denver	Nashville
Dallas	Columbus	Washington, D.C.	Memphis
San Jose	Fort Worth	Boston	Portland
Austin	Indianapolis	El Paso	Oklahoma City
Jacksonville	Charlotte	Detroit	Las Vegas

In addition, 21CP proposes surveying the additional cities either because of its multi-layered accountability system, current or recent involvement in a consent decree, or West Coast location:

New York	Long Beach
Los Angeles	Oakland
Chicago	Sacramento

21CP will analyze the survey results and then identify sites that utilize successful or promising accountability practices related to discipline appeals processes. 21CP will then conduct two to three site visits (3 day duration) at those identified sites. The purpose is to gain a deeper understanding of the characteristics of the appeals process in establishing benchmarks for the subsequent analysis.

Deliverables

21CP will generate a report and recommendations providing the team's findings. The report will describe the types of disciplinary review processes utilized by Seattle and comparable city law enforcement agencies. The report will include a compilation of survey data and analysis of that data to identify both common and promising disciplinary review/appeal practices. Based on the analysis, 21CP will include objective, evidence-based observations about the strengths and weaknesses of the City's accountability

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system, including presenting alternatives and approaches for policy, procedure, training, and agency protocols. 21CP believes that it would be inappropriate to endorse a set of recommendations, since any acceptable path forward for the City will require a strong consensus among key accountability partners and stakeholders at the City, based on further engagement with the Seattle community.